

REMARKS

These remarks and the accompanying amendments are responsive to the Office Action dated February 9, 2004 (hereinafter referred to as "the Office Action"). A petition and fee for a one month extension of time accompany this amendment, extending the period for response until June 9, 2004.

As a preliminary matter, section 2 of the Office Action indicates that the oath is defective since the prior oath included a claim for priority under 35 U.S.C. 119(b) that was disclaimed by the applicants. A corrected oath and declaration accompanies this amendment. ✓

Section 3 of the Office Action objected to the specification as including references to specific claim numbers. This amendment amends the specification to remove the reference to the specific claim numbers.

Referring to the claims, Claims 2 through 23 (hereinafter referred to as the "prior" claims) were pending at the time of the last examination resulting in the Office Action. As a preliminary matter, the Office Action Summary indicated that Claim 1 is still pending although being withdrawn from consideration. However, in Amendment D filed January 5, 2004, Claim 1 was expressly cancelled. Even if Claim 1 was not previously cancelled, Claim 1 is expressly cancelled herein as reflected in the above listing of claims. In any case, Claims 2 through 23 were substantively examined in the Office Action.

By this amendment, Claim 2 is cancelled. Claim 3 is amended to be in independent form including all of the features recited in the prior Claim 2, from which the prior Claim 3 depended. Also, Claims 9, 17, 18 and 20 are amended herein. Accordingly, upon entry of this amendment, Claims 3 through 23 (hereinafter referred to as the "current" claims) will be pending for further

examination. Of these current claims, Claims 3, 4, 9-11, 13, 15 and 17-19 are independent claims.

The Office Action rejects Claims 3-5, 8-12 and 17, 20 and 21 under 35 U.S.C. 102(b) as being anticipated by United States patent number 6,377,545 issued to Onyiagha (hereinafter referred to as "Onyiagha"). Onyiagha does not qualify as a prior art reference under 35 U.S.C. 102(b) as it has an issue date that is after the filing date of the present patent application. Accordingly, the undersigned respectfully requests that the 35 U.S.C. 102(b) rejection be withdrawn. The undersigned assumes that the Examiner intended to use Onyiagha as a 35 U.S.C. 102(a) reference, and thus the below remarks reflect accordingly. The Office Action further rejects Claims 13-16, 18, 19, 22 and 23 under 35 U.S.C. 103(a) as being unpatentable over Onyiagha in view of United States patent number 5,570,360 issued to Klausmeier et al. (hereinafter referred to as "Klausmeier").

Claims 3, 4 and 10

As recited in claims 3, traffic control is carried out for received data "such that a cumulative transmission volume in a traffic monitoring period defined by taking account of [a] proper period does not exceed a volume based on a traffic rate." The proper period may be, for example, a radio frame period and may be a period at which the data takes place in a burst mode. Claims 4 and 10 also recited this feature and further specifies that the volume may be, for example, an allowed transmission volume.

The Office Action states that there is support for the anticipation rejection of Claim 3 by referring to the Onyiagha passage at *column* 3, lines 34-55. However, this passage merely describes in relevant portion that the pRAM controller 40 includes a pRAM neural network 46 which monitors the number of cells in the buffers 44, and takes into consideration the expected

arrival rate of future cells, and if a subscriber transmits cells which go beyond those which the network provider has agreed to accept, the neural network determines whether those cells can be allowed access to the switch, or whether the CLP bit will be set, which will mean that the *cells* may be discarded.

That is, in the Onyiagha passage, there is no description that data takes place in a burst mode. Also, there is no description regarding a period, although there is description regarding a rate. Therefore, Onyiagha does not disclose the above-mentioned features recited in Claims 3, 4 and 10. Thus, Claims 3, 4 and 10 are not anticipated by Onyiagha.

Claims 5, 8 and 20

Claims 5 and 8 depend from Claim 4 and thus are not anticipated by Onyiagha for at least the same reasons that Claim 4 is not anticipated by Onyiagha. Furthermore, Claim 20 depends from Claim 3 and thus is not anticipated by Onyiagha for at least the same reasons that Claim 3 is not anticipated by Onyiagha.

Claim 9

As recited in Claim 9, traffic control is carried out in a first shared resource, "wherein the first shared resource is a transmission path between [the] radio base station and the local switch for transmitting data between the radio base station and the local switch."

The Office Actions states that there is support for the anticipation rejection of prior Claim 9 by referring to the Onyiagha passage at *column* 2, lines 49-54, etc. In this passage, there is a reference that the principle of Onyiagha may be applied to a base station. However, there is no description that the principle is applied to a transmission path between the radio base station and the local switch for transmitting data between the radio base station and the local switch.

Therefore, Onyiagha does not disclose the above-mentioned features recited in Claims 9, and is thus not anticipated by Onyiagha.

Claims 11 and 17

As recited in Claims 11 and 17, traffic control is carried out in a LAN. The Office Action supports the anticipation rejection of Claims 11 and 17 using the Onyiagha passage at *column 3*, lines 16-23, etc. This passage does have a description regarding LAN traffic sources 22. However, as described in the passage, what carries out traffic control is ATM layer adapters 20 having pRAM controller 40, not the LAN traffic sources 22 (see column 3, lines 14-57 and Figures 1 and 2). Therefore, Onyiagha does not disclose the above-mentioned features of Claims 11 and 17, and thus these claims are not anticipated by Onyiagha.

Claims 12 and 21

Claims 12 and 21 depend (directly or indirectly) from Claim 11 and thus are not anticipated by Onyiagha for at least the same reasons that Claim 11 is not anticipated by Onyiagha.

Claims 13 and 18

As recited in Claims 13 and 18, traffic control is carried out in a PBX. The Office Action supports the non-obviousness rejection of Claims 13 and 18 using the Klausmeier passage at *column 3*, lines 45-50. This passage does describe that the customer premise equipment 160 may consist of a PBX. However, the passage describes that what carries out traffic control is BPX 120,130 or IPX 140, 150 having Network Interface card (NI), not the customer premise equipment 160 (see Figures 1-3 and their description). Onyiagha also likewise does not describe such a PBX as recited in Claims 13 and 18.

Thus, even if combined, Onyiagha and Klausmeier do not teach or suggest the above-mentioned features of Claims 13 and 18, and thus these claims are not unpatentable over Onyiagha in view of Klausmeier.

Claims 14 and 22

Claims 14 and 22 depend (directly or indirectly) from Claim 13 and thus are not unpatentable over Onyiagha in view of Klausmeier for at least the same reasons as provided for Claim 13.

Claims 15 and 19

As recited in Claims 15 and 19, traffic control is carried out in a gateway switch. The Office Action supports the non-obviousness rejection of Claims 15 and 18 using the Klausmeier passage at *column 3, lines 45-50*. The Office Action asserts that this passage teaches a packet router, which corresponds to a gateway. However, a gateway and a gateway switch are different from each other. Further, in this passage, although there is description that the customer premise equipment 160 may consist of the packet router, etc., what carries out traffic control is BPX 120, 130 or IPX 140, 150 having Network Interface card (NI), not the customer premise equipment 160 (see Figures 1-3 and their description).

Thus, even if combined, Onyiagha and Klausmeier do not teach or suggest the above-mentioned features of Claims 15 and 19, and thus these claims are not unpatentable over Onyiagha in view of Klausmeier.

Claims 16 and 23

Claims 16 and 23 depend (directly or indirectly) from Claim 15 and thus are not unpatentable over Onyiagha in view of Klausmeier for at least the same reasons as provided for Claim 15.

Claims 6 and 7

The Office Action indicated that Claims 6 and 7 were objected to as being dependent upon a rejected base claims. However, Claims 6 and 7 depend from Claims 4 and 5, which are both patentable over the art of record for at least the reasons provided above. Therefore, Claims 6 and 7 are in allowable form.

In light of these remarks and the accompanying amendments, the applicants respectfully request reconsideration of the claims and favorable action such as the withdrawal of the 35 U.S.C. 102(b) and 35 U.S.C. 103(a) rejections, and the allowance of the claims. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 8th day of June, 2004.

Respectfully submitted,



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